Mr. Speaker: The question is that the Bill be passed.

The motion was put and carried and the Bill was passed.

The Travancore-Cochin Places of Public Resorts Bill

Mr. Speaker: Yesterday while the Travancore-Cochin Places of Public Resorts Bill was introduced in the House, the legal aspect of the question was referred to by some hon'ble members. A suggestion was made that the Advocate-General may be asked to give his opinion. I would call upon the Advocate-General to explain the position.

Advocate-General **(Sri. Thaikat N. Subramonia Iyer):** Sir, the question that has been mooted for the consideration of this House is as to whether the principles in the Travancore-Cochin Places of Public Resorts Bill could in any manner and to any extent affect the Fundamental Rights guaranteed under the Indian Constitution.

ஸ்ரீ. ஏ. சிதம்பரநாத நாடார்: ஸர், அவர்கள் பேசுவது ஒன்றும் எங்களுக்கு கேட்கவில்லை. தயவு செய்து, அவர்களை மைக்கின் பக்கத்தில் வந்து பேசக் கேட்டுக் கொள்கிறேன்.

Sri. Taikad N. Subramonia Iyer: Sir, the question to be considered is as to whether any of the Fundamental Rights, particularly the right of free assemblly that has been guaranteed under Art. 19 of the Indian Constitution is hit by anything contained in the Bill now before the House. The Hon'ble House will be pleased to remember the wording of Art. 19 clause (b) which reads thus;

"All citizens shall have the right to assemble peaceably and without arms"

There is however a proviso by way of explanation to the declaration of Fundamental Rights, in clause 3 of that Article. It reads thus:—

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause".

A historical retrospect of the Fundamental Rights guaranteed by the Constitution would convince everybody that the declaration of Fundamental Rights has been borrowed, if I may use the expression, from Amendments 1, 5 and 14 to the American Constitution. The wording in amendment I of the American Constitution runs practically on the same lines and contains the identical idea. This guarantee of free assemblage for a purpose, was designed in order that there may be free exchange of opinion, free exchange of ideas and liberty for the citizens to consort together in any place, for a commonweal. It is however to be noticed that despite the guarantee in the American Constitution, restrictions in regard to the place of assemblage have been provided in America from very early times. Just to illustrate that idea I would invite the attention of the Hon'ble House to the statement of the law in America. One passage in Mutual Film Corporation V. Ohio Industrial Commission, 236. United States Reports p. 230 may be read—It is well settled that the State in the exercise of its police power and power of taxation, may, except in so far as it is restrained by the organic law, regulate theatres, shows and public resorts and may require from the person or persons conducting the same the payment of a licence fee or tax. This power to regulate and license places of public amusement or resort may be exercised directly by the State or it may be and often is delegated to and exercised by Municipal Corporations.

Whether a reasonable restriction in the grant of licenses for resort to places of public entertainment will not in its essence hit the Fundamental Rights guaranteed

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by the American Constitution has been the subject of the decisions reported in 216 United States Reports just now referred to. There is a more recent case on the subject, *Hague versus Committee for Industrial Organisation*, a decision of Justice Roberts of the American Court reported in 307 United States Report, page 496. The American Jurists thought there was an essential distinction between the guarantee of individual personal rights of a citizen and restrictions imposed in the name of public convenience, public order or tranquillity in order to direct or control places of such resort. I would respectfully invite the attention of this House to the object that has been laid down under Art. 19 of the Constitution and the necessary resultant by the Proviso contained in 19 (3). Reasonable restrictions in the name of public order are the words on which emphasis has been laid. It is not so much having that right, as the ordered control of that right. It is a restriction not upon the individual but one placed upon the place as such. The rights guaranteed by the Constitution are in their very nature inherently personal. None of the personal rights are affected by the Bill. It is the right over the places that is sought to be controlled. A line of distinction has to be drawn between the place as such and the persons who resort to that place.

Sri. P. Balakrishnan Tampi: Now may I draw the attention of the Advocate General to clause 11 of the Bill before the House? To that extent the individual right of the citizens to assemble is infringed. That aspect has to be elucidated.

Sri. Taikad N. Subramonia Iyer: I may answer that question after a few preliminary observations. I was at the question as to whether the general or reasonable restriction is consonant with the spirit underlying the rights guaranteed by the Constitution. In the English Law also from very early times as I have been able to see, there have been restrictions for running theatres, entertainments, gymnasia and such institutions and licenses granted for using certain places. They are the subject matter of various legislative enactments in that area. Before I give an answer to the question raised by Mr. Tampi I would invite the attention of the House to legal restrictions in regard to human rights from the observations of a very famous author Dicey. In his Law of the Constitution at page 279, 1945 edition he puts the legal position thus.

"The limitation or restrictions which arise from the paramount necessity for preserving the King's Place, whatever their extent—and as to their exact extent some fair doubt exists—in reality nothing else than restraints which for the sake of preserving the place, are imposed upon the ordinary freedom of individuals."

The principle has been so clearly expounded by the learned author. In India, the question as to what will be a reasonable restriction has come up for consideration. I am aware that the question that has been put by my learned friend Mr. Balakrishnan Tampi to the effect if restrictions such as would be a negation of the rights granted by the Constitution would be bad in law. There is no doubt on that point. This aspect of the question has been fully dealt with in a recent case, *viz.*, Dr. N. B. Khare *v.* the State of Delhi reported in 1950 A. I. R. October Part. The legality of Mr. Khare's externment from the Punjab was fully dealt with in that case. The leading judgment was written by the Chief Justice Kania. He was of the view that these reasonable restrictions were designed with a view to conserve the rights granted in the Constitution and to the extent that they are reasonable and agreeable to the objectives of the legislative enactment they will be valid, and if they run counter to the rights granted in the Constitution they would be *ultra vires*. Yesterday, during the course of a talk with some esteemed members of this House a similar case reported in the September part of the A. I. R. 1950 was referred to.

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[Sri. Taikad Subramonia Iyer]

The case had a bearing on Article 19 (*b*) of the Constitution, "Cross Roads" was a newspaper published in Bombay. In that newspaper certain caustic remarks and criticisms were made on the administration of the Madras Province. The Madras Ministry thought that there was a good deal of untruth in the comments made. The Ministry thought out ways and means by which this menace could be averted. They passed an order prohibiting the entry of any copy of the "Cross Roads" into the Province. The matter was taken to the Supreme Court. Four out of the five judges were of the view that reasonable restrictions could be had where public order was affected and where public tranquillity was affected. Public Order concerned the Provinces and States and Public Tranquillity was the concern of the Centre. But Mr. Justice Fazal Ali did not see eye to eye with his colleagues in making a distinction between public order and public tranquillity. I merely mention that as an illustration to show that in the interests of public order restrictions could be had. Therefore, my humble view, on the authority of decisions of cases in England, India and America is that restrictions can be imposed in regard to places of public resort or entertainment. These are merely reasonable restrictions on the exercise of the rights that are granted by the Constitution. There is an essential distinction between the existence of a right and the exercise of a right. When reasonable restrictions are made the existence of the right is accepted as the basis of the exercise of the same. In that view, it appears to me, Sir, that the Constitution framed this provision having in mind the extent and scope within which the statute must function. If it were not so, restrictions upon motor vehicles, hackney carriages, regulation of trade and commerce, regulation of public order and morality, will be in essence inroads into fundamental rights. Therefore it is just and necessary to draw a line of distinction between existence and exercise of fundamental rights. The point at which the existence of a right is assumed, the regulation of that right begins. It appears to me that in several jurisdictions there are laws which regulate and restrict places of entertainment, without touching even the fringe of fundamental rights granted by the Constitution. It appears to me, therefore, that article 19 (1) which guarantees free assemblies is not hit by the Bill that is before the House. In regard to clause 11 of which Mr. Tampi made a pointed reference I have only to submit this: An authority has been created for the purpose of regulating congregations by this Bill. The function of that authority is definitely limited within the framework which the Statute invests on the person. A magistrate has got the right to insist on the original purpose for which a license is granted and it does not mean that the magistrate is to sit in judgment on the merits on which a license has been granted or whether a license may be granted with certain conditions. It is a matter of common knowledge that several licenses are revoked in the ordinary work-a-day world. It will be open to any grantor to revoke a license if the conditions under which that particular license has been granted have not been adhered to. This is nothing more than the exercise of reasonable restrictions. It would appear that that clause does not hit any fundamental rights granted by the Constitution. It is a matter for consideration whether in essence and substance this clause is an infraction of personal rights. In my humble view there is no such infraction. No impediment in law disables the House from going on with the merits of the legislation.

Sri. P. Balakrishnan Tampi: May I know whether it would be right to invest any authority with the power to prevent the further use of such a place for the purpose of re-assembling. That is, whether a magistrate would not infringe the fundamental rights in preventing the further use of that hall for free assembly in revoking a licence?

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Sri. Taikad N. Subramonia Iyer : The very limitations of that grant, and the circumstances on which the grant has been made would certainly make it necessary to have that grant revoked. That is the law regarding the ordinary grant of licence. You grant a licence to a man to build upon your premises, you allow a particular person to trade in a particular variety of goods, and when you find an infraction of the grant and you find a substantial breach of the conditions under which the license has been granted, the grant is revoked. There is nothing to hit the fundamental rights in the clause.

Sri. P. Balakrishnan Tampi : May I point out that by revoking a licence granted to a particular person the rights of the people who assemble there is infringed ?

Sri. Taikad N. Subramonia Iyer : Supposing the building is in a dangerous condition and may topple down at any moment. To deny power to the authority to recall that license would. I submit, give rise to serious consequences endangering public safety. Therefore, it may be necessary to provide for recalling or revoking the licence.

വ്യവസായവും എക്സൈസ്സും സ്വയംഭരണവും വകുപ്പുമന്ത്രി (ശ്രീ. എൻ. കുഞ്ഞുരാമൻ): സർ, ഈ ബിൽ താഴെപറയുന്ന അംഗങ്ങടങ്ങിയ ഒരു സെലക്ട് കമ്മിറ്റിക്ക് അയയ്ക്കണമെന്നു ഞാൻ അഭിപ്രായപ്പെടുന്നു.

Sahib Bahadur V. A. Abdul Aziz	Sri. N. Daniel Jose
Sri. P. K. Dewar	Sri. A. Easwara Pillai
Sri. P. Gopalan	Sri. S. Ambrose
Sri. A. K. George	Sri. P. K. Krishnan Sastri

The Committee would report on the Bill in due course. The quorum will be 4.

Sri. P. Balakrishnan Tampi : I suggest the name of Mr. C. A. Ouseph also.

Sri. C. V. Iyyu : I suggest the name of Sri. Eachara Menon also on the Committee.

Mr. Speaker : The question before the House is that the Bill be referred to a Select Committee consisting of Hon'ble Members suggested by the Minister. The Bill is to be reported on in due course.

The motion was put and carried.

The Bill was referred to the Select Committee accordingly.

The Travancore-Cochin Easement Bill

Minister for Finance and Revenue **[Sri. A. J. John] :** Sir, I beg to introduce the Travancore-Cochin Easement Bill.

Chief Minister **[Sri. T. K. Narayana Pillai] :** I second the motion.

Mr. Speaker : The Bill is introduced.

Sri. A. J. John : Sir, I move that the Bill be referred to a Select Committee.

തിരുവിതാംകൂറിൽ ഈസ്മെന്റ് ആക്ട് ഏതൊന്നില്ലായിരുന്നു. അതിനുപകരം ലിമിറ്റേഷൻ ആക്ട് ൨൭-ം, ൨൮-ം വകുപ്പുകളാണ് പ്രയോഗത്തിലിരുന്നതു്. കൊച്ചിയിൽ ഒരു ഈസ്മെന്റ് ആക്ട് നിലവിലുണ്ടു്. ഈ ഈസ്മെന്റ്ബില്ല് ഇൻഡ്യൻ ഈസ്മെന്റാക്ടിലുള്ള വ്യവസ്ഥകളെ അടിസ്ഥാനപ്പെടുത്തി ഉണ്ടാക്കിയിട്ടുള്ളതാണു്. തിരുവിതാംകൂറിനും കൊച്ചിക്കും ഒരുപോലെ ബാധകമാകുന്ന ഒരു നിയമം നടപ്പിൽ വരുത്തണമെന്നുള്ള ഉദ്ദേശത്തോടുകൂടിയാണു് ഈ ബിൽ അവതരിപ്പിച്ചിരിക്കുന്നതു്. ഈ ബില്ലിലെ വ്യ

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